

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JAMES GILLIAM, Individually And On )  
Behalf Of All Others Similarly Situated, )  
 )  
Plaintiff, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY et al., )  
 )  
Defendants. )

CIVIL ACTION  
NO. 04-cv-11600-NG

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BOGATIN FAMILY TRUST, Individually )  
And On Behalf Of All Others Similarly )  
Situated, )  
 )  
Plaintiff, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY et al., )  
 )  
Defendants. )

CIVIL ACTION  
NO. 04-cv-11642-NG

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CYNTHIA A. BENNETT and )  
GUY E. MILLER, )  
 )  
Plaintiffs, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY and )  
FMR CO., INC., )  
 )  
Defendants. )

CIVIL ACTION  
NO. 04-cv-11651-MLW

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GHASSAN J. AWALI, Individually And )  
On Behalf Of All Others Similarly Situated, )

Plaintiff, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY et al., )

Defendants. )

CIVIL ACTION  
NO. 04-cv-11709-MLW

WILLIAM S. GROESCHEL, Individually )  
And On Behalf Of All Others Similarly )  
Situating, )

Plaintiff, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY et al., )

Defendants. )

CIVIL ACTION  
NO. 04-cv-11735-GAO

NANCY HAUGEN, MICHAEL F. )  
MAGNAN, KAREN L. MAGNAN, )  
ROSE M. IANNACCONE, PRESELEY C. )  
PHILLIPS, ANDREA M. PHILLIPS, )  
and CINDY SHURGIN, for the use and )  
benefit of FIDELITY MAGELLAN )  
and FIDELITY CONTRAFUND, )

Plaintiffs, )

v. )

FIDELITY MANAGEMENT & )  
RESEARCH COMPANY and )  
FMR CO., INC., )

Defendants. )

CIVIL ACTION  
NO. 04-cv-11756-MLW

[Caption continues on next page]

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DAVID O. FALLERT, Individually And On )  
 Behalf Of All Others Similarly Situated, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FIDELITY MANAGEMENT & )  
 RESEARCH COMPANY et al., )  
 )  
 Defendants. )

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CIVIL ACTION  
 NO. 04-cv-11812-MLW

**THE BENNETT PLAINTIFFS' MOTION FOR  
 LEAVE TO FILE SURREPLY IN OPPOSITION TO THE  
 CLASS ACTION PLAINTIFFS' MOTION FOR CONSOLIDATION**

Plaintiffs Cynthia A. Bennett and Guy E. Miller (the "Bennett Plaintiffs"), pursuant to Local Rule 7.1(B)(3), hereby move for leave to submit a Surreply in Opposition to the Class Action Plaintiffs' Motion for Consolidation. The proposed Surreply that the Bennett Plaintiffs seek to submit is attached hereto as Exhibit A.

In support of this motion, the Bennett Plaintiffs state as follows:

1. On September 1, 2004, the plaintiffs in *Gilliam v. Fidelity Management & Research Co. et al.*, No. 04-11600; *Bogatin Family Trust v. Fidelity Management & Research Co. et al.*, No. 04-11642; *Awali v. Fidelity Management and Research Co. et al.*, No. 04-11709; *Groeschel v. Fidelity Management and Research Co. et al.*, No. 04-11735; and *Fallert v. Fidelity Management and Research Co. et al.*, No. 04-11812 (collectively, the "Class Actions") filed a Motion for Appointment of Tri-Lead Counsel and Appointment of Liaison Counsel and a Motion for Consolidation, seeking to consolidate the Class Actions with each other and also with two other actions: *Bennett v. Fidelity Management and Research Co. et al.*, No. 04-11651 (the

"Bennett Action") and *Haugen v. Fidelity Management and Research Co. et al.*, No. 04-11756 (the "Haugen Action"). These motions were filed in the Class Actions but not in the Bennett or Haugen Actions, which were both pending as related cases before Judge Wolf.

2. On September 15, 2004, the Bennett Plaintiffs filed in the Bennett Action their opposition to the motion for consolidation.<sup>1</sup> A courtesy copy of the Bennett Plaintiffs' opposition also was submitted to Judge Stearns, before whom the Class Actions were then pending.<sup>2</sup>

3. The plaintiffs in the Haugen Action, as well as all of the defendants in the Class Actions and the Bennett and Haugen Actions also have opposed the Class Action Plaintiffs' motion for consolidation.

4. On December 2, 2004, the Class Action Plaintiffs filed a Reply Memorandum in further support of their motion for consolidation. The Class Action Plaintiffs did not seek leave from the Court, pursuant to Local Rule 7.1(B)(3), prior to filing their Reply Memorandum. On December 15, 2004, the Class Action Plaintiffs filed a motion seeking leave to file their previously-submitted Reply Memorandum.

5. The Reply Memorandum raises several arguments and legal issues beyond those raised originally in motion for consolidation, to which the Bennett Plaintiffs are compelled to respond. The Bennett Plaintiffs believe that their proposed Surreply will assist the Court in rendering a decision on the merits of the Class Action Plaintiffs' motion for consolidation.

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<sup>1</sup> Believing that briefing on the issue of appointment of lead counsel was premature, the Bennett Plaintiffs requested that they be given an opportunity to be heard on that issue if and when the cases are actually consolidated.

<sup>2</sup> Since that time, Judge Stearns has recused himself from the Class Actions, which were then reassigned to other judges in this district as follows: *Gilliam* and *Bogatin Family Trust* were reassigned to Judge Gertner; *Groeschel* was reassigned to Judge O'Toole; and *Awali* and *Fallert* were reassigned to Judge Wolf.

**Local Rule 7.1 Certification**

6. Counsel for the Bennett Plaintiffs hereby certify that they have conferred with counsel for the Class Action Plaintiffs in a good faith, albeit unsuccessful, attempt to resolve the issues raised herein.

WHEREFORE, the Bennett Plaintiffs respectfully request that they be granted leave to file their Surreply in Opposition to the Class Action Plaintiffs' Motion for Consolidation.

Respectfully submitted,

CYNTHIA A. BENNETT and  
GUY E. MILLER,

By their attorneys,

\_\_\_\_\_  
s/Matthew J. Tuttle

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Dated: December 27, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney(s) of record for each other party via the electronic filing system or via facsimile on December 27, 2004.

\_\_\_\_\_  
s/Matthew J. Tuttle  
Matthew J. Tuttle